))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 43 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

==========

STATE OF GUJARAT

Versus

UTTAMCHAND TOPANDAS SINDHI

Appearance:

MR ND GOHEL, Ld. APP for Appellants

MR DK MODI and MR MD MODI for Respondent absent.

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/08/2001

ORAL JUDGEMENT

1. Heard Mr.N.D.Gohel, learned APP for the appellant.

2. On 31st May, 1988, the Food Inspector - Shri A.K.Patel took the sample of Kaju-Drax Ice-cream from a Uttam Tea and Cold Drink House, respondent - accused.

The same was sent to the Public Analyst. The report of the Analyst dated 10th June, 1988 shows that it was adulterated as well as it does not conform to the standard and the provisions laid down under the Prevention of Food Adulteration Act, 1954, because, the percentage of milk fat and total solid was found less than minimum standard prescribed under the Rules. After obtaining the sanction for the prosecution, the Food Inspector filed Criminal Complaint No.545 of 1988 against the respondent accused before the Court of J.M.F.C., Savarkundla for the offences punishable under Section 7(1) read with Section 16(1) of the Prevention of Food Adulteration Act.

3. After considering the evidence of the complainant and the witnesses examined by him, the learned J.M.F.C., Savarkundla acquitted the respondent accused giving the benefit of doubt by judgment and order dated 19th October, 1991. The same is challenged in this appeal, which was admitted on 10th July, 1992 which can be heard and disposed of today only, after a period of more than 13 years from the date of commission of the offence.

4. Having carefully gone through the impugned judgment of acquital part of the judgment, I am not satisfied with the reasons assigned by the learned Magistrate on the ground of sanction. However, on other ground, the impugned judgment of acquittal is received to be confirmed because the evidence of the complainant is not coroborated by the witnesses. The Panch witness has turned hostile. It is true that on the evidence of complainant, the accused can be convicted if it is otherwise reliable but in the instant case one more grounds assigned by the learned Magistrate is that except deficiency in the milk fat and total solids no one has stated that the sample of Ice-cream was found to be injurious to health. In that view of the matter, though I am not fully agreeing with the reasons for acquittal assigned by the learned Magistrate, I do not intent to interfere with the impugned judgment of the learned Magistrate, after a lapse of so many years of the committal of offence.

5. In view of the above discussion, this appeal fails and it is dismissed.

(B.J.Shethna,J.)

(vrp)*